

# Order

Michigan Supreme Court  
Lansing, Michigan

November 26, 2008

Clifford W. Taylor,  
Chief Justice

136756 & (11)

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 136756  
COA: 285016  
Wayne CC: 07-008606

MARTIN J. SAM,  
Defendant-Appellant.

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On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the May 27, 2008 order of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we VACATE the defendant's plea-based conviction of operating a motor vehicle while under the influence of intoxicating liquor-third offense (OUIL 3<sup>rd</sup>), MCL 257.625(1), (9)(c), because the prosecution concedes that it could not have prosecuted the defendant for this offense under the statute as it was written at the time of the defendant's offense. See *People v New*, 427 Mich 482, 491-492 (1986); *People v Hammond*, 187 Mich App 105, 110-113 (1991). We note that the November 29, 2007 judgment of sentence reflects a plea to the original charge of operating while intoxicated causing serious impairment of a body function of another person, MCL 257.625(5); the discrepancy between the judgment of sentence and the defendant's actual plea to OUIL 3<sup>rd</sup> appears to have been the result of a clerical error. We REINSTATE the original charge of operating while intoxicated causing serious impairment of a body function of another person, MCL 257.625(5), and REMAND this case to the Wayne Circuit Court for trial or for further proceedings consistent with this order. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 26, 2008

*Corbin R. Davis*

Clerk